



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
WASHINGTON, D.C. 20424  
June 12, 2013

**OFFICE OF THE SOLICITOR**

**VIA E-MAIL TO** [jmcelhatton@federaltimes.com](mailto:jmcelhatton@federaltimes.com)

Mr. Jim McElhatton  
Federal Times  
319 N. Alfred Street  
Alexandria, VA 22314

Dear Mr. McElhatton:

This refers to your request dated April 26, 2013, received in the Solicitor's Office of the Federal Labor Relations Authority (FLRA) on April 29, 2013, seeking information under the Freedom of Information Act (FOIA). Specifically, you seek "a copy of the [FLRA's] sequestration plan created or dated during the five months prior to this request." Although, as explained below, we are withholding under FOIA Exemption 5 the FLRA's draft contingency plan for operating under sequestration, you may contact our Executive Director, Sarah Spooner, for other helpful information on this general subject. Ms. Spooner's direct line is 202-218-7791.

Office of Management and Budget (OMB) Memorandum 13-03, Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources, required agency heads to submit to OMB draft contingency plans for operating under sequestration. In accordance with M13-03, the FLRA submitted its draft contingency plan to OMB for review. The FLRA's plan remains in draft form, and as such, is a pre-decisional and deliberative document.

An agency may withhold such pre-decisional and deliberative documents under FOIA Exemption 5's deliberative process privilege. 5 U.S.C. § 552(b)(5). Exemption 5 applies to records that are both "predecisional," that is, "generated before the adoption of an agency policy," and "deliberative," that is, "reflective of the give-and-take of the consultative process." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

Generally, factual material is not protected under Exemption 5's deliberative process privilege. However, this material is protected if "it is 'inextricably intertwined' with the deliberative material." *Judicial Watch v. Dep't of Justice*, 432 F.3d 366, 372 (D.C. Cir. 2005) (citations omitted). In the case of the FLRA's draft plan, its factual material is

inextricably intertwined with the plan's deliberative material, and therefore is also not subject to mandatory disclosure under Exemption 5. In these circumstances, we have determined to withhold the FLRA's draft plan under Exemption 5. Accordingly, pursuant to § 2411.8 of the FLRA's FOIA regulations (5 C.F.R. § 2411.8), we are denying your request. Pursuant to § 2411.10 of the FLRA's FOIA regulations, this decision may be appealed to the Chairman of the FLRA, Ernest DuBester, within 30 days of when this response is received.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosa M. Koppel". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Rosa M. Koppel  
Solicitor